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In the Supreme Court of the United States

OCTOBER TERM, 1951

GUY A. THOMPSON, Trustee, Missouri Pacific Railroad Company, Debtor, *Appellant*

v.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellees*

Appeal from the United States District Court for the Eastern District of Missouri

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BRIEF OF THE INTERSTATE COMMERCE COMMISSION

April 1952.

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OPINIONS BELOW

The majority and dissenting opinions of the specially constituted District Court (R. 242) are reported in 101 F. Supp. 48. The report of the Interstate Commerce Commission involved (R. 163)

is reported in 278 I.C.C. 519, in which the prior report of Division 2, reported in 272 I.C.C. 368, is referred to and affirmed.

JURISDICTION

The judgment of the District Court was entered on October 30, 1951 (R. 242). The petition for appeal was presented and allowed on December 6, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1253 and 2101(b). Probable jurisdiction was noted March 3, 1952 (R. 257).

QUESTIONS PRESENTED

1. The principal question presented is whether the evidence before the Commission warranted the finding that an open through route was in existence, at the time of the entry of the Commission's order herein, from the origin points on the line of the Missouri Pacific, west of Concordia, Kansas, via connections at Concordia with the Burlington and thence over that line, to Omaha, Nebraska, and Council Bluffs, Iowa.

2. Another question presented is whether the Commission's order violates the provisions of Section 15(3) and (4) of the Interstate Commerce Act.

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act here involved are set forth in the Appendix.

STATEMENT

This is a direct appeal from the final judgment of a specially constituted district court sustaining a report and order of the Interstate Commerce Commission issued in a proceeding entitled No. 29461, *Omaha Grain Exchange of Omaha, Nebr.* v. *Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), et al.*

1. Commission Proceedings

The Commission proceeding was instituted by complaint filed by the Omaha Grain Exchange of Omaha, Nebraska,[1] hereinafter referred to as the Omaha Grain Exchange, alleging in substance that the rates on grain and grain products[2] from points in Kansas on the line of the Missouri Pacific, Concordia and points west thereof, known as the "Central Branch," applicable over that railroad to Concordia, thence the line of the Burlington to Omaha and Council Bluffs, were unreasonable and unduly prejudicial, in violation of Sections 1 and 3 of the Interstate Commerce Act (R. 2). The complaint prayed the Commission to prescribe reasonable rates for the future (R. 3).

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[1] A corporation composed of merchants, manufacturers and millers, engaged in buying, selling, receiving, processing and shipping of grain and its products (R. 1).

[2] Rates and differences in rates are stated herein in amounts per 100 pounds; and do not include the general increases authorized in 1946 and subsequently.

The St. Joseph Grain Exchange, Atchison Board of Trade, Board of Trade of Kansas City, Topeka Chamber of Commerce, Topeka Traffic Association, J. C. Lysle Milling Company, and the Kansas-Missouri River Mills, intervened in opposition to the complaint. Following hearings on the complaint a proposed report was issued by the examiner recommending that the Commission should find that the rates assailed were not shown to be unreasonable or otherwise unlawful. Exceptions to the proposed report and replies to the exceptions were filed by the parties.

Thereafter, the Commission, by Division 2, issued its report and order (R. 171), which differed from the recommendations of the examiner.[3]

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[3] Division 2 stated that the rates assailed from points on the Missouri Pacific's Central Branch to Omaha and Council Bluffs, via the Burlington from Concordia, are not made with reasonable relation to the rates from neighboring key points as contemplated by the findings in the Western Grain Rate Investigation (*Grain and Grain Products*, 205 I.C.C. 301 and 215 I.C.C. 83, Cf. *Board of Trade* v. *United States*, 314 U. S. 534; that they are not reasonably related to the rates on like traffic from the same origins to Kansas City and fail to reflect the general level of gathering rates to the markets from other points in the same general area. It then found that the rates are and for the future will be unreasonable to the extent that they exceed or may exceed rates on like traffic from the same origins to Kansas City. However, the Commission deferred the entry of an order to afford the Missouri Pacific an opportunity to establish rates over its single-line route on the basis of the Kansas City rates. (272 I.C.C. 368, 374; R. 179) Upon failure of the Missouri Pacific to establish such rates the Commission reopened the proceedings for further consideration which resulted in the order here under attack (R. 164).

Upon reconsideration before the entire Commission, three Commissioners dissenting and one absent, it was found that the rates assailed are, and for the future will be, unreasonable to the extent that they exceed, or may exceed, rates on like traffic from the same origins to Kansas City (R. 170).

The record in the Commission proceedings reveals that the Missouri Pacific has a through single line, known as the "Central Branch", extending westward from Atchison, Kansas, a point on its main north-south line from Omaha to Kansas City, through Concordia to Lenora, which points are 155 and 293 miles, respectively, west of Atchison. West of Concordia other branches extend from the main stem of the Central Branch to Stockton and Burr Oak, Kansas, and Hastings, Nebraska. At Concordia, about midway between Atchison and Lenora, the Central Branch connects with a branch line of the Burlington, which extends in a north-northeasterly direction 198.2 miles to Omaha. The distance from Concordia to Omaha, over the single-line route of the Missouri Pacific, through Atchison, is 311.6 miles, or 113.4 miles longer than the short-line distance from Concordia to Omaha over the Burlington. From Concordia and points west on the Central Branch, the distances over the single-line of the Missouri Pacific are 5 miles greater to Kansas City than from the same points to Omaha over the joint Missouri Pacific-Burlington route through Concordia (R. 164-165).

The record further shows that the rate of the Burlington from Concordia to Omaha is the same as that of the Missouri Pacific from Concordia to Kansas City, which gives effect to the approximately equal distances to Omaha and Kansas City from Concordia. However, from points west of Concordia where the short line distances to Kansas City and Omaha are approximately the same, the rates to Omaha are much higher than they are to Kansas City, being as much as 11 cents higher to Omaha from Lenora for 5 miles less distance over the Missouri Pacific-Burlington short route through Concordia (R. 165).

On a representative shipment of grain from Lenora to Kansas City the rate assessed and charged is 19 cents per 100 pounds. Such shipment would move over the Missouri Pacific through Concordia to Atchison and thence southward over its main north-south line to Kansas City travelling 336 miles. A shipment moving from Lenora to Omaha over the single line of the Missouri Pacific, through Concordia to Atchison, thence northward to Omaha travelling a distance of approximately 449 miles, is charged a rate of 25.5 cents (R. 174, 177).

The Burlington publishes a rate of 16 cents per 100 pounds for a shipment of grain from Concordia to Omaha, a distance of 198.2 miles. A shipment from Lenora to Omaha moving over the Missouri Pacific to Concordia, thence over the Burlington to Omaha, would travel 336 miles, or 5

miles less than the distance from Lenora to Kansas City, however, the combination of rates applicable on this through shipment is 30 cents, as compared to the 19-cent rate to Kansas City (R. 174).

In connection with its discussion of the above-described rate situation on grain movements from the area served by the Central Branch of the Missouri Pacific, the Commission compared the rates to Omaha from points adjacent to that area over other railroads. As regards the rate situation the report of the Commission on reconsideration (R. 165-166) says:

> From Belleville, Kans., 18 miles north of Concordia, the Omaha-Denver, Colo., line of the Chicago, Rock Island and Pacific Railway Company (Rock Island) extends westward through Kansas immediately north of and paralleling the Central branch. From Phillipsburg, Kans., on the Rock Island, the rate is 19 cents to Omaha, 243 miles, and to Kansas City, 299 miles, but from Glade, Kans., on the Central branch, 8 miles across country from Phillipsburg, the lowest rate available to Omaha is the single-line rate of 25.5 cents for 398 miles over the circuitous route of the Missouri Pacific through Atchison. Over the short joint route of the Missouri Pacific from Glade to Concordia and the Burlington thence to Omaha, 285 miles, a combination rate higher than 25.5 cents is in effect, but from Glade to Kansas City, 290 miles, the Missouri Pacific's rate is only 19 cents. Other illustrations to

the same effect are shown at pages 370 and 371 of the prior report herein.[4]

In its consideration of the reasonableness of the rates involved the Commission, by Division 2, discussed the differences between distances over the Missouri Pacific and over the Concordia route. It pointed out that the percentage of circuity of the Missouri Pacific's single-line route ranges from 33.7 percent with respect to Lenora and 54.2 per-

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[4] The report of Division 2 (R. 174, 175) states:

> * * * From Hastings and Superior, Nebr., on the Hastings branch, to Omaha, the rate of the Missouri Pacific is 15 cents, a key-point rate prescribed in the grain investigation. Both of these points are also served by the Burlington. From Warwick and Republic, Kans., on the same branch, 9 and 16 miles south of Superior the rate to Omaha over the Missouri Pacific to Superior, thence Chicago & North Western Railway Company, 192 and 199 miles, is 20 cents, or 3 cents higher than the rate to Kansas City. * * *
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> * * * * *
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> Rates to points beyond the Missouri River markets are combinations based on those markets. As illustrating the adjustment to such points, it is shown that from Lenora to Chicago, Ill., the rate by way of Kansas City is 35 cents, made of factors of 19 cents and a proportional of 16 cents, while the rate by way of Omaha is 41.5 cents, made of factors of 25.5 cents and a proporational of 16 cents. The distance by which the 35-cent rate applies over the Missouri Pacific by way of Kansas City to Omaha, thence the Burlington to Chicago, is 1,041 miles, while the distance by which the 41.5-cent rate applies, over the Missouri Pacific through Atchison to Omaha, thence Burlington to Chicago, is only 943 miles, and the distance over the Concordia route is 836 miles.

cent from Jamestown, Kansas, a point also involved. The Commission considers any circuity over a longer route unreasonable, and therefore unlawful if it amounts to more than 50 percent, where the distance is 500 miles or less. *Routing via Quanah, A. & P. Ry. Co.*, 220 I.C.C. 137, 140, footnote 2.

The rate situation, above described, resulted in the inability of the Omaha grain dealers, merchants and millers to compete with the Kansas City markets in the purchase of grain in the area served by the Central Branch of the Missouri Pacific (R. 13-14, 17, 23-24, 176). Because of this handicap the Omaha Grain Exchange filed its complaint in the Commission proceedings seeking a just and reasonable rate over the lines of the Missouri Pacific and the Burlington through Concordia, after the Missouri Pacific had refused to grant the request of the Omaha interests to publish rates to Omaha over its own line on the same basis as those it maintained in effect to Kansas City (R. 8).

After discussing at some length the disparity of the rates in their relation to the movement of grain from the area involved to Omaha, and the contentions of the Missouri Pacific that Section 15(3) and (4) of the Act prevents the Commission from according the relief sought by the Omaha Grain Exchange,[5] which will be left for later treatment

[5] The Missouri Pacific invoked the provisions of Section 15(3) and (4) of the Act as preventing the Commission from

when reached in the argument, the Commission's report on reconsideration recorded the following conclusions and findings (R. 168-169):

> * * * As through routes are already in existence at combination rates over the short routes through Concordia by way of the Missouri Pacific and the Burlington, and the only relief here sought by complainant being reasonable rates over those routes, division 2 correctly concluded that it was unnecessary to discuss the provisions of section 15(3) and (4), and that those provisions of the act were no bar to the prescription of reasonable rates over such routes, citing *Virginian Ry. Co.* v. United States, 272 U. S. 658, 666. * * * .
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> * * *
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> Upon reconsideration of the record herein, we find that the rates assailed from points on the Central branch of the Missouri Pacific to Omaha and Council Bluffs are, and for the future will be, unreasonable to the extent that they exceed, or may exceed, rates on like traffic from the same origins to Kansas City. The findings of division 2 in the original report are affirmed.

2. Proceedings in the District Court

The complaint of the Missouri Pacific, seeking to enjoin and set aside the Commission's order

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prescribing the Kansas City rate basis to Omaha over the joint lines of that railroad and the Burlington because it would result in the Missouri Pacific being short hauled in violation of subparagraph (4).

here under attack, was filed against the United States on February 12, 1951. The Commission intervened, pursuant to the provisions of section 2323, Title 28, U. S. Code, and filed its answer on March 28, 1951 (R. 180). The Omaha Grain Exchange also intervened and filed its answer on March 30, 1951 (R. 185). The United States answered on April 16, 1951 (R. 181). The case was argued before the Three-Judge District Court on June 14, 1951.

On October 30, 1951, the District Court, with one member dissenting, entered an opinion upholding the Commission's order as valid in all respects and dismissing the complaint (R. 235, 242-255). The division in the lower court arose over whether or not there was substantial evidence to support the finding of the Commission that a through route was in existence from points in Kansas, on the Central branch of the Missouri Pacific, to Omaha via connections at Concordia with the Burlington.

SUMMARY OF ARGUMENT

I.

What the Omaha Grain Exchange sought of the Commission in this case was rates on grain and grain products from origins on the Missouri Pacific's line in Kansas, west of Concordia, to Omaha which would be on the same basis as the rates it charged for grain from the same origins to Kansas City. It was really of no particular concern to the

Exchange whether appellant established such rates over its single-line route or over the joint routes of the Missouri Pacific and the Burlington, via connections at Concordia, so long as the rates to Omaha did not exceed those to Kansas City. However, the rate sought was over the joint route.

In its consideration of the situation presented by the complaint before it, the Commission found that an open through route was already in existence at combination rates over the short route through Concordia via the Missouri Pacific and the Burlington, and since the only relief sought by the Omaha Grain Exchange was reasonable rates over those routes, the short hauling provisions of Section 15(3) and (4) were no bar to its prescription of such rates. The finding that a through route existed is amply supported by the evidence. Where a through route exists there is no justification for another such route unless it would be desirable in the public interest. Since the Omaha Grain Exchange considered that such a route was in existence it only requested the Commission to establish reasonable rates over such route.

II.

The provisions of Section 15(3) and (4) do not stand alone but must be considered in connection with Sections 1 and 3. Therefore, the Commission's order herein is not controlled by the provi-

sions of this section of the Act. The technical construction of one portion of the Act may not be relied upon by carriers to justify the violation of other provisions. The establishment of a reasonable rate over an existing route is in no sense an undertaking to compel a carrier to short haul itself even though it has a longer haul over another route.

The Missouri Pacific cannot, by the maintenance of prohibitive local rates over its line west of Concordia, close the short route over the Burlington to grain traffic from Kansas origins to Omaha in order to hold this traffic for its longer single-line haul.

It is not for the railroads to determine what markets shall be open to trade, or by the maintenance of rate disadvantages to restrict or circumscribe the opportunities of shippers to sell in markets otherwise available to them.

The rates on grain from the Kansas origins to Omaha over the Missouri Pacific-Burlington route is not a Commission prescribed rate. Neither is the single line rate over the Missouri Pacific via Atchison to Omaha a Commission prescribed rate. The lawful rates from the area involved to Omaha and Kansas City are the rates prescribed by the Commission in the Western grain rate investigation which are based on the shortest distance over routes by which carload traffic could be interchanged without unloading.

This case is bottomed on Sections 1 and 3 of the Act.

The Commission found that in 1931 when the original order in the Western grain rate investigation was effective the Missouri Pacific established rates from points on its Central Branch the same to Omaha as to Kansas City and grain moved at those rates in volume, but the rates were changed upon the solicitation of grain dealers at the competitive Missouri River markets and the higher rates here complained of were established. It also found that the assailed rates are not made with reasonable relation to the rates from neighboring key points as contemplated by the Commission's findings in the Western grain rate investigation; that they are not reasonably related to the rates on like traffic from the same origins to Kansas City and that they fail to reflect the general level of gathering rates to the markets from other points in the same general area. From these findings it is clear that the Commission has made a finding in this case of undue and unreasonable preference and discrimination under Section 3 of the Act. Therefore, the Missouri Pacific may not rely on Section 15(4) as preventing the Commission from prescribing the assailed rates.

ARGUMENT

I.

The Commission's Finding That a Through Route Exists Over the Lines of the Missouri Pacific and the Burlington Is Supported by Substantial Evidence

It will be observed from the complaint of the Omaha Grain Exchange, filed in the Commission proceeding, that the establishment of through route over the Missouri Pacific and the Burlington via Concordia to Omaha, was not requested. It was the complainant's contention that since the Concordia route was a through route it was entitled to reasonable rates over that route (R. 2-3). Joint rates were not sought. The Commission so construed the complaint saying in its report on reconsideration (R. 169):

> The rates in issue (over the Concordia route) are assailed as being unreasonable and unduly prejudicial under Sections 1 and 3 of the Act. Complainant does not seek through routes because, as previously stated, it already has such routes and can use them if it elects to pay the excessive combination rates in effect over such routes. Nor does it here seek the prescription of joint rates. The form of the through rates, whether joint or combination, is of no particular concern to complainant so long as such rates are not unreasonable nor unduly prejudicial.

The order of the Commission does not direct the establishment of a through route. It only pro-

vided for the level of rates to be charged for shipments over the route through Concordia (R. 170-171).

The Commission found from the evidence before it that through routes were already in existence at combination rates over the short routes through Concordia via the Missouri Pacific and the Burlington (R. 168). The Missouri Pacific urges that this finding is unsupported by evidence (Br. 11).

Before entering upon a discussion of the evidence supporting the above finding, reference will be made to the Commission's definition of a through route and the characteristics ascribed thereto. In the early report of the Commission issued May 29, 1907, *Through Routes and Through Rates*, 12 I. C. C. 163, 166, the Commission defined a through route in clear and simple language which has been referred to and adopted by this Court in a number of cases. In *St. Louis S. W. Ry. Co.* v. *United States*, 245 U. S. 136, 139 (note 2), the Court paraphrazed the definition of through routes as contained in the *Through Routes and Through Rates* case, as follows:

> A "through route" is an arrangement, express or implied, between connecting railroads for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another. Through carriage implies a "through rate." This "through rate" is not necessarily a "joint rate." It may be merely an aggregation of

separate rates fixed independently by the several carriers forming the "through route"; as where the "through rate" is "the sum of the locals" on the several connecting lines or is the sum of lower rates otherwise separately established by them for through transportation. * * *

In the *Through Routes and Through Rates* case, above referred to, the Commission describes the procedure to be followed in determining whether a through route actually exists. The report states, *Ibid.*, pp. 166-167:

> In answering the question of fact as to the existence of a through route, all the incidents and circumstances of the shipment must be taken into account. * * * Carriers forming through routes without joint rates, however, need publish and file only "the separately established rates * * * applied to the through transportation" * * *.
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> * * * such incidents as billing, the transfer from one carrier to another, the collection and division of transportation charges, * * * and other like incidents of the transaction may properly be depended upon for guidance as to the existence of a through route. * * *.
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> * * * Therefore, it is settled that, whatever other facts or incidents of a shipment may serve to prove the existence of a through route, a through bill of lading is, as to the carriers recognizing it, conclusive evidence of the existence of such through route.

In the light of the above definition and discussion of through routes it would seem clear that the fact that a shipment originating at a point on the line of one carrier and intended for a destination on another moving at a "through rate," whether a joint rate or a combination of locals, would constitute ample proof that the route of movement between such points is a "through route" within the meaning of the Act.

There is evidence of record supporting the Commission's finding that a through route is in existence via Concordia. It is an admitted fact, as the Commission found (R. 165) that there are physical track connections at Concordia of the Missouri Pacific with the Burlington. A witness for the Omaha Grain Exchange testified that the Exchange "had a reasonably short workable route through Concordia and the Burlington" Railroad (R. 151), but the rate was so high shippers could not use it; that the single-line route rate of the Missouri Pacific to Omaha was likewise so high that it could not be used (R. 12, 13); and that the rate to Omaha of 30 cents per 100 pounds from Lenora, a representative origin, on the Missouri Pacific, over the Burlington-Missouri Pacific route, and the rate of 25.5 cents over the single-line route of the Missouri Pacific from Lenora to Omaha, as compared with a rate of 19 cents from Lenora to Kansas City, prevented the movement of any grain to Omaha from Lenora or any point west of Concordia (R. 13, 14). In other words, from Lenora and from each

of the other points west of Concordia the rate to Kansas City was 6.5 cents per 100 pounds lower than the rate to Omaha over the Missouri Pacific single-line route and 11 cents per 100 pounds lower than the rate over the Burlington route.

The Missouri Pacific's own witness, testifying in regard to the operations of that carrier on the "Central Branch," stated that "Concordia is the breaking point for traffic over that branch and explained that by "breaking point" he meant that all traffic which comes in from the west to Concordia is rehandled at Concordia. He further testified that from a practical operating standpoint Concordia is a division point, and that trains are made up and the crew changed at that point (R. 56). Further testifying, this witness described the switching operations involved in the interchange of cars which are switched from the tracks of the Missouri Pacific to the tracks of the Burlington and to the tracks of other rail carriers with which it maintained connections (R. 60-61). From this testimony it is clear that physical track connections are maintained between the Missouri Pacific and the Burlington at Concordia and that traffic originating on the line of the Missouri Pacific west of Concordia moves through Concordia via the Burlington to points on the Burlington's line, including Omaha if shippers are willing to pay the combination rates of the two lines.

In corroboration of the above evidence of the existence of a through route there was on file with

the Commission a copy of the Official Railway Equipment Register,[6] compiled by the various railroads, showing that the Missouri Pacific and the Burlington, as well as other carriers, each lists Concordia as a point of interchange of traffic with other lines. There are interchange tracks available and used in connection with the routing of cars over the lines of these two carriers.

Therefore, physical track connections, facilities for interchange, including switches and interchange tracks, and through rates by combination applicable to through movements of grain and other commodities is convincing evidence of the existence of a through route via Concordia over the Missouri Pacific and the Burlington. These facts plus the additional fact that traffic is interchanged daily at Concordia between these two lines certainly warranted the Commission's finding that a route existed. In this connection the Commission and the courts have held consistently that a joint rate is not necessary and the through rate may as well be a combination of locals or proportionals. This principle of rates is so well known to the Court that the citation of authorities is unnecessary.

The Missouri Pacific did not, in the Commission proceeding, successfully refute the legal existence of a through route, but confined its theory to the

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[6] I. C. C. No. 288 (in effect in 1946) and I. C. C. No. 298 (in effect at the present time).

proposition that no such route existed because of the excessively high combination rates in effect over that route. In other words, the route was closed commercially to the movement of grain. This fact is amply demonstrated by reference to its Petition for Reconsideration filed with the Commission on November 8, 1948, wherein it stated in the introductory paragraph thereof that

> *The route* over which the rates are assailed is not a published tariff route; it is closed to all intents and purposes *by reason of the fact that the rates applicable over said route* are made a combination of locals on Concordia and are higher than the through rate over the single line route of the Missouri Pacific. (Italics added)

Appellant urges that the only way it had to close the Concordia route to traffic was to publish the higher combination rate of 30 cents, thus announcing to the world that the route was closed. (Statement as to Jurisdiction * * * on Appeal, p. 25) This is tantamount to an admission that the route was once open and would still be open but for the excessively high rates.

The Missouri Pacific does not, and, indeed, it cannot, refer to any rule in its tariff showing that the Concordia short route is not open legally to through traffic from points on its line via the Burlington from Concordia to Omaha. This railroad has not taken any action to close the route except by publishing an excessively high rate

from origins on its line through Concordia. This is not enough. The route could not be closed except by appropriate tariff publication. The Commission has held that a carrier cannot cancel a joint rate in order to maintain the higher combination of rates for the purpose of retaining a long haul.[7]

The Missouri Pacific admits that the purpose of maintaining high local rates over its line and that of the Burlington is to keep the Concordia route closed to through grain traffic moving from the Kansas origins to Omaha, and to preserve to the Missouri Pacific its single-line haul. (Statement as to Jurisdiction * * * on Appeal, p. 25.)

It seems clear from the foregoing testimony of witnesses, the tariff publications, and admissions of appellant that a legal through route is in existence over the short route of the Missouri Pacific and the Burlington via Concordia. The question then presented is whether the Missouri Pacific may by the publication of excessively high and discriminatory rates close a practicable and shorter route to traffic in order to protect its haul over a route that is 113 miles longer. This Court in *Virginian Railway Co.* v. *United States*, 272 U. S. 658, held that it could not do so.

That a carrier may not close a route which may be used in the movement of traffic by the imposition of an excessively high local rate is also revealed in

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[7] *Grain and Grain Products*, 161 I. C. C. 709; *Routing of Iron and Steel Articles*, 168 I. C. C. 175; *Routing of Ores via Southwest Missouri R.*, 220 I. C. C. 110; *Routing via Quanah, A. & P. Ry.*, *Ibid.* 139-41.

A., T. & S. F. Ry. v. *United States,* 279 U. S. 768. In that case, known as the "*Dodge City* case", the Supreme Court held (p. 773) unreasonable and discriminatory, and, therefore, unlawful, a 4-cent addition to the Santa Fe's local rate on any Dodge City grain delivered by it at Kansas City which was later re-shipped over the line of the Kansas City Southern Railway to Gulf ports. This rate increase was for the express purpose of enabling the Santa Fe to retain for its line the outbound movement of all grain originated by it which was later to be re-shipped from Kansas City to the Gulf.

Another case of like effect is *Great Northern Ry. Co.* v. *United States,* 81 F. Supp. 921 (affirmed 336 U. S. 933). In that case the Court held that the Great Northern could not, by refusal to accord transit privileges on grain, force shippers to ship over its longer route in preference to a shorter route via another carrier in oder to preserve the longer haul to the Great Northern.

In finding that an open through route was in existence in the instant case (although closed commercially by reason of higher rates), the Commission concluded that there was no statutory provision which prevented it from prescribing reasonable rates over that route, citing *Virginia Ry. Co.* v. *United States,* 272 U. S. 658. An examination of the facts in the *Virginian* case reveals a striking similarity to the instant case. The line of the Virginian, extending only eastward to tidewater from

mines in West Virginia, connected with 99 of these mines with respect to which rates were published and applied on coal destined to eastern points on a reasonable basis. The Virginian and the Chesapeake & Ohio Railroad, connecting at a point west of these mines, had combination rates in effect to points west which were so high that the westward route was closed commercially to coal traffic. By trackage agreements subsequently entered into between the Virginian and the Chesapeake & Ohio, some 45 of the mines were enabled to secure through routes at reasonable rates to the West, while the other 54 mines were denied similar treatment and the route remained commercially closed as to them because the combination of the Virginian's local rate from the mines to the junction with the Chesapeake & Ohio and the latter's rate from the junction to the destination points in the West resulted in charges so high as to be prohibitive. On complaint to the Commission brought by the 54 mines alleging that the rates to the West were unreasonable and discriminatory, the Commission found that through routes were in existence to the West but they were closed to the complainants by reason of the excessively high combination rates. Based upon the fact that combination rates were in effect, although excessively high, and that other mines on the Virginian were accorded through route privileges, the Commission found that through routes to the West were open to the

complainants. The Supreme Court sustained the Commission, stating (p. 66):

> * * * Through routes to the West were already in existence. And there were through rates by combination. * * * The fact that the combination rates were excessive constituted the only obstacle to the movement.

In another respect the *Virginian* case is similar to the instant case. It will be observed that in neither case did the Commission prescribe joint rates. The Commission, in that case, as in the instant case, prescribed through rates which it found reasonable and nondiscriminatory.

The issue presented in the instant case in the Commission proceeding was whether the combinations of local rates on grain from points on the Central Branch of the Missouri Pacific, Concordia and points west thereof, to Omaha and Council Bluffs, over that line to Concordia and thence over the Burlington, are and for the future will be unreasonable to the extent that they exceed rates on like traffic from the same origins to Kansas City. In finding that rates over the joint lines of these two carriers to Omaha, amounting to 30 cents as compared to rates from the same origins to Kansas City (5 miles farther than to Omaha) of only 19 cents, were unreasonable, the Commission in its reports discusses at some length the disparity of the rates on grain to Omaha as contrasted with Kansas City and concluded that they were not Commission prescribed rates (R. 167).

In the report (R. 166) it was found that during 1931 and 1932, when its original order entered in the western grain rate investigation[8] was in effect, rates from points on the Missouri Pacific's Central Branch to Omaha were the same as to Kansas City, and grain moved to Omaha over the Missouri Pacific in volume, but these rates were changed (5 years later (R. 12)) on solicitation of the grain dealers at competing Missouri River markets.

In its report on reconsideration the Commission found (R. 166) that:

> Kansas City and Omaha are rival Missouri River primary grain markets. In the general western grain investigation we prescribed rate-break combinations of rates to and from these markets; that is, flat rates thereto and proportional rates therefrom, on the same general level. From points in southern Nebraska, such as Superior, about 40 miles north of the Central branch points in issue here, we prescribed rates to Omaha 2 cents less than to Kansas City, in recognition of shorter distances to Omaha than to Kansas City. From points in Kansas on and south of the Kansas City-Denver main line of the Union Pacific, about 40 miles south of the Central branch, we prescribed rates 6 cents (now 6.5 cents) lower to Kansas City than to Omaha, in recognition of distances much less to Kansas City than to Omaha. *In the territory between these two related regions, which includes the Central*

[8] *Grain and Grain Products*, 164 I. C. C. 619.

branch and other points in northern Kansas, no specific rates were prescribed to Omaha, the finding being that the rates should be reasonably related to the rates from neighboring key points. During a period in 1931 and 1932, when the original order in the western grain rate investigation was effective, the Missouri Pacific established rates from points on the Central branch the same to Omaha as to Kansas City, and grain moved under such rates over that line to Omaha in volume, but upon solicitation of grain dealers and millers at the competing Missouri River markets, this adjustment was changed and the higher adjustment here complained of was established. The Rock Island, which serves the same general territory, continued a parity of rates to Omaha and Kansas City which it had established from points on its line, as did also the Burlington.

Kansas City, Omaha, and the affected origins on the Central branch are all in western trunk-line territory. The general basis of key-point rates to the rate-break markets prescribed in the grain investigation was 91 percent of the western trunk-line grain scale prescribed in the original report in the same proceeding for movements in western trunk-line territory other than to rate-break markets. *All of these rates were based on the shortest distances over routes by which carload traffic could be interchanged without unloading.* Based on such distances, the rates to Kansas City from points on the Central branch considered herein average 90 percent of that scale, and the assailed rates from the same points to

Omaha average 126 percent of the scale. The rates sought, based on distances over the Concordia route, average 92 percent of the scale. We therefore conclude, as did division 2 in the prior report, that *the assailed rates are not made with reasonable relation to the rates from neighboring key points as contemplated by our findings in the western grain rate investigation, that they are not reasonably related to the rates on like traffic from the same origins to Kansas City, and that they fail to reflect the general level of gathering rates to the markets from other points in the same general area.* (Italics added.)

As disclosed by the above quotation the rates prescribed by the Commission for grain movement in the area involved in this case are "based on the shortest distances over routes by which carload traffic could be interchanged without unloading." Therefore, it seems clear that the rates over the joint lines of the Missouri Pacific and Burlington, via Concordia to Omaha, as well as the single line rate of the Missouri Pacific to Omaha from points on the latter's line west of Concordia, are not Commission prescribed rates and that they are not made "with reasonable relation to the rates from neighboring key points as contemplated by * * * the findings in the western grain rate investigation, [and] that they are not reasonably related to the rates on like traffic from the same origins to Kansas City, and that they fail to reflect the gen-

eral level of gathering rates to the markets from points in the same general area."

Also it is clear from the quotation that the Commission did not prescribe rates from the Central branch but left this area open and required the Missouri Pacific to prescribe rates reasonably related to the rates prescribed from neighboring key points. The basis of rates prescribed in the original order in the *Western Grain Rate* case (164 I. C. C. 619) was not changed in so far as it affects the rate on traffic from the Central branch to Omaha, by the Commission's findings in its subsequent reports, wherein further consideration was given to the western grain rates, reported in 173 I. C. C. 511, 205 I. C. C. 301, and 215 I. C. C. 83.

In the situation presented the Missouri Pacific should not be permitted to maintain and charge rates in excess of those prescribed by the Commission by relying on the short hauling provisions of section 15(4). The provisions of section 15 of the act do not stand alone but must be considered in the light of other provisions of the act, including section 1. (*Routing via Quanah, A. & P. Ry. Co.*, 220 I. C. C. 137, 139.) The technical construction of one portion of the act may not be relied upon by a carrier to justify the violation of other provisions. *Mfrs. Asso. of York, Pa.* v. *P. E R. Co.*, 107 I. C. C. 219.

II.

In the Situation Presented Section 15 Is Not Controlling

The Missouri Pacific contends that the Commission's order is void because it establishes a through route without making the findings required of Section 15(3), and forces the carrier to short haul itself in violation of subparagraph (4) of that section. It insists (Br. 10) that Section 15(4) protects the long haul of the Missouri Pacific on grain traffic it originates at the Kansas origins. It is also argued (Br. 14-18) that the appellant does not lose its rights under Section 15(4) by having complied with the provisions of Sections 1(4), 3(4) and 6(1) of the Act, which require it, respectively, to establish reasonable through routes, afford reasonable and equal facilities for interchange between connecting carriers, and to publish rates.

In making the above contention the Missouri Pacific relies on *Lemon Cove-Woodlake Asso.* v. *A., T. & S. F. Ry. Co.*, 139 I. C. C. 239, 245 (Br. 14), in which the Commission stated that it had previously found that the provisions of Section 1(4) are subordinate to the specific provisions of Section 15 providing for the establishment of through rates and joint rates. The decision in this case is distinguishable from the instant case in that the Commission found that the refusal of the defendants to install track connections and afford facilities for interchange of traffic between their respective lines and to establish joint through rates

was neither unreasonable under Section 1, nor unduly prejudicial to the complainants in violation of Section 3. In the instant case the track connections were available and through routes in existence and the Commission found that the rates assailed were both unreasonable and unduly preferential and prejudicial as well as unjustly discriminatory.

The Missouri Pacific further relies upon *Western Pac. R. Co.* v. *Northwestern Pac. R. Co., et al.*, 191 I. C. C. 127 (1933), as authority for the proposition that Section 1(4) is subordinate to Section 15(4) (Br. 14-15). That case is also distinguishable from the instant case. The Western Pacific sought joint rates between points on the Northwestern Pacific, on the one hand, and eastern defined groups, on the other hand, over routes in which it would be an intermediate participating carrier, alleging that the failure of the defendants to join with it in establishing joint rates was discriminatory and unduly prejudicial, and that the combination rates between those points on transcontinental traffic, moving over the routes in which the complainant was an intermediate participating carrier, were unreasonable. The Northwestern Pacific had in effect joint rates between points on its line and points on the lines of the eastern defined group of carriers over routes in which the Santa Fe and the Southern Pacific were intermediate carriers. The Commission found (p. 137) that the maintenance by defendants of joint rates between points on the Northwestern Pacific, on the one

hand, and eastern defined groups, on the other hand, over routes in which the Santa Fe and the Southern Pacific were intermediate carriers, although these latter two carriers refused to participate in similar routes in which the Western Pacific is an intermediate carrier, did not subject it to discrimination or undue prejudice, in violation of section 3 of the act. It further found that the combination rates assailed, between the points in question over routes embracing the Western Pacific as an intermediate participating carrier, were not unreasonable. It will be noted that there were joint rates over other lines as well as reasonable combination rates over complainant's line. There was no evidence that any shipper was denied any market for its goods. This is not true in the instant case. The rates were found unreasonable, unduly prejudicial, and discriminatory resulting in denial of markets to shippers.

The appellant relies on the decision of the Supreme Court in *United States* v. *Missouri Pacific R. Co.*, 278 U. S. 269, 276, (the *Subiaco* case) holding that the purpose of Section 15(4) was to protect the long haul of any and all participating carriers.[9] (Br. 14, 21.) In that case Section 3 was not involved (p. 277) and its impact has been reduced by subsequent legislation.

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[9] Following the decision in the *Subiaco* case the Commission, in several of its annual reports to Congress, urged an amendment which would overcome this decision. Finally by the Transportation Act of 1940 (54 Stat. L. 898) the Act was amended, not by repealing the short hauling provision

The Missouri Pacific contends (Br. 19-20) that the decision in *A., T. & S. F. Ry.* v. *United States*, 279 U. S. 768, relied upon by the Commission, is inapplicable. We think the principle of that case is clearly applicable here, for it demonstrates that a carrier may not impose an unreasonable rate on traffic which it originates where such rate is maintained for the purpose of preventing itself from being "short hauled." In the cited case, the Santa Fe, in order to prevent itself from being short hauled, published a proportional rate on grain from Dodge City, Kans., to the primary grain market of Kansas City which was higher than the local rate between the same points. The local rate was to be collected at the time of the movement and, if the outbound shipment of the same grain moved over the Santa Fe to the destination involved, a Gulf port, the balance of the through rate from Dodge City to the Gulf would be applied. If, how-

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as the Senate wished to do but by the addition of clause (b) to Section 15(4) which provided another exception to the short hauling prohibition when the Commission "finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation." The legislative history of Section 15 is discussed at length in *Pennsylvania R. Co.* v. *United States*, 54 F. Supp. 381, 386 (referred to on appeal in the decision of the Supreme Court in *Pennsylvania R. Co.* v. *U. S.*, 323 U. S. 588, 591), in connection with the interpretation of the clause (b) amendment to Section 15(4) which was the principal issue involved in these cases in passing upon the validity of the Commission's order in *D. A. Stickell & Sons, Inc.* v. *Alton R. Co.*, 255 I. C. C. 333.

ever, the outbound shipment moved over the Kansas City Southern, the Santa Fe would go back and collect upon the inbound shipment the difference between the local rate paid and the higher proportional rate, amounting to 4 cents per 100 pounds. The Santa Fe had its own rails from Dodge City via Kansas City to the Gulf and it claimed that under Section 15(4) of the Interstate Commerce Act it was entitled to the "long haul," whereas if the grain moved out from Kansas City over the Kansas City Southern it would be "short hauled." The Commission found that the inbound proportional rate was unreasonable and this Court, speaking through Mr. Justice Brandeis, in finding the rate "on its face unreasonable" and in sustaining the Commission's order, said (p. 776):

> The broad power to pass on the reasonableness of rates conferred upon the Commission in 1887 has not been in terms limited by any amendatory act. On the other hand, there has been much legislation designed to make the power more effective. The special power to establish through routes and joint rates was not conferred until 1906. Act of June 29, 1906, c. 3591, Sec. 4, 34 Stat. 584. There is not in that Act as amended, see *United States* v. *American Express Co.*, 265 U. S. 425, 430, note 2, or in any decision of this Court construing it; or in any of the decisions of the Commission applying it, to which attention has been called, the slightest basis for the suggestion that in conferring the restricted power to establish

through routes, Congress intended to limit the theretofore unrestricted power of the Commission to pass upon the reasonableness of rates. Compare *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Tennessee*, 262 U. S. 318, 323.[10]

The Santa Fe there, as the Missouri Pacific here, attempted to justify an unreasonable rate for the purpose of protecting its long haul by relying on the provisions of Section 15(4). The holding of the Court is to the effect that this cannot be done.

The issue before the Commission in the instant case being the reasonableness of the total rate from the Kansas origins over the Missouri Pacific to Concordia, thence over the Burlington to Omaha, the Commission may prescribe a reasonable rate for a through movement. It was not required to consider the rates in halves but to concern itself with respect to the reasonableness of the total or aggregate rate. In complying with the order in this case, it will be a simple matter for the two railroads to adjust their separate tariffs to make the reasonable through rate the Commission ordered.

A. The Commission Found the Rates Discriminatory in Violation of Section 3.

It is obvious that in this case the Commission made a finding of undue and unreasonable preference under Section 3 of the Act. After pointing out that Kansas City and Omaha are rival grain

[10] See *Routing via Quanah, A. & P. R., supra* (p. 139).

markets, and that in the Western Grain investigation the Commission prescribed rate-break combinations of rates to and from these markets, i.e., flat rates thereto and proportionals therefrom on the same general level, and that while no specific rates were prescribed to Omaha from the Central branch the rates should be reasonably related to the rates from neighboring key points (R. 166), the Commission found that:

> * * * During a period in 1931 and 1932, when the original order in the western grain rate investigation was effective, the Missouri Pacific established rates from points on the Central branch the same to Omaha as to Kansas City, and grain moved under such rates over that line to Omaha in volume, but upon solicitation of grain dealers and millers at the competing Missouri River markets, this adjustment was changed and the higher adjustment here complained of was established. (R. 166)
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> * * * the assailed rates are not made with reasonable relation to the rates from neighboring key points as contemplated by our findings in the western grain rate investigation, that they are not reasonably related to the rates on like traffic from the same origins to Kansas City, and that they fail to reflect the general level of gathering rates to the markets from other points in the same general area. (R. 167)

In view of this finding of discrimination the Missouri Pacific may not rely on the short hauling provisions of Section 15(4). After having estab-

lished the Commission's prescribed rates in 1931, the Missouri Pacific could not, without Commission approval, change them. This approval was never given.

The Commission having made a finding of discrimination under Section 3, it is clear that the order in this case meets the standard fixed by this Court in *St. Louis S. W. Ry. Co.* v. *United States*, 245 U. S. 136, 145, which is stated as follows:

> * * * Orders to remove discrimination, as commonly framed, do not fix rates. They merely determine the relation of rates, by prohibiting the carrier from charging more for carriage to one locality than under similar conditions to another; and they usually leave the carriers free to remove the discrimination either by raising the lower rate or by lowering the higher rates or by doing both. *American Express Co.* v. *Caldwell*, 244 U. S. 617, 624.

But the Missouri Pacific contends (Br. 21) that in the instant case there was no basis for a Section 3 order and none was made. As heretofore shown the Commission's order is bottomed not only on Section 1 but Section 3 as well. In any event, it is clear that the end result of the Commission's order is correct. This Court has held that where the result of an order of an administrative tribunal is correct, the method employed in reaching it is not important. In *Federal Power Commission* v. *Hope Gas Co.*, 320 U. S. 591, the Court said (p. 602):

* * * Under the statutory standard of "just and reasonable" it is the result reached not the method employed which is controlling. Cf. *Los Angeles Gas & Electric Corp.* v. *Railroad Commission*, 289 U. S. 287, 304-305, 314; *West Ohio Gas Co.* v. *Public Utilities Commission* (No. 1), 294 U. S. 63, 70; *West* v. *Chesapeake & Potomac Tel. Co.*, 295 U. S. 662, 692-693 (dissenting opinion). It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences. [Citing cases.]

See also *Interstate Commerce Commission* v. *Louisville & Nashville R. R.*, 227 U. S. 88, 98.

As hereinbefore shown the Commission found that the combination rate of the Missouri Pacific and the Burlington on grain from Lenora, Kansas, a representative point on the former's line, to Omaha of 30 cents (made up of 14 cents charged by the Missouri Pacific to Concordia and 16 cents from point to Omaha charged by the Burlington)

for a haul of 336 miles is unreasonable as compared with a rate over the single line route of the Missouri Pacific of 25.5 cents, for a haul of 449.5 miles, and a rate of only 19 cents over the Missouri Pacific from Lenora to Kansas City, a distance 5 miles greater than that over the joint route to Omaha via Concordia.[11] As a result of the excessively higher rates to Omaha than to Kansas City from the origins on the Missouri Pacific west of Concordia over either the joint lines of the Missouri Pacific and the Burlington, or over the single line of the Missouri Pacific, it is clear that such rates effectively prevents any grain whatsoever from moving to Omaha and results in undue or unreasonable preference and unjust discrimination as found by the Commission.

The three-judge District Court in *Great Northern Ry. Co.* v. *United States, supra,* in an opinion affirmed by this Court (336 U. S. 933), in speaking of a situation wherein prohibitive rates resulted by the failure of the Great Northern to provide transit privileges permitting grain to move over the shorter route of another carrier, in order that the Great Northern could retain the longer haul over its own routes, the Court quoted the lan-

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[11] In determining the reasonableness of rates the Commission may use comparisons with other rates in the same or adjacent territory, and although not conclusive of the reasonableness of the rate under investigation, the rate comparisons have probative value. *Youngstown Co.* v. *United States,* 295 U. S. 476, 480.

guage used by the Commission in *D. A. Stickell & Sons, Inc.* v. *Alton Railroad Co.*, 255 I. C. C. 333, 337, saying (p. 925):

> It has been said "It is not the province of railroads to determine what markets shall be available to sellers or buyers, or by * * * the maintenance of rate disadvantages to restrict or circumscribe the opportunities of shippers located on other railroads to sell in markets served by them. It is their function to transport in the channels necessitated by trade conditions and not to fix limitations on commerce.

It has been shown that the rates assailed as well as the rates over the Missouri Pacific's single line route to Omaha were not the rates prescribed by the Commission in the Western Grain Rate investigation. The rate over the Missouri Pacific from the origins in Kansas to Kansas City are Commission prescribed rates. Therefore, the Kansas City rate basis prescribed by the order, being the proper basis for application to Omaha, the order herein should not be set aside. The Supreme Court held in *Board of Trade* v. *United States*, 314 U. S. 534, 548, that:

> * * * We certainly have neither technical competence nor legal authority to pronounce upon the wisdom of the course taken by the Commission. It is not for us to tinker with so sensitive an organism as the grain rate structure, only a minor phase of which is caught in the record before us. If we were

to grant the relief sought by the appellants, we would be restoring evils which the exclusive rate-break adjustment was designed to remove —evils which, for all we know, would be far more serious than those complained of by the appellants.

As regards the Missouri Pacific's contention that it was not the intention of Congress to establish a rule that a carrier's compliance with its duty under Section 1(4) of the Act should cause it to lose a right given to it under Section 15(4) (Br. 15), it is the Commission's contention that Congress never intended to deprive shippers of the right to reasonable, nonprejudicial and nondiscriminatory rates under the Act. *A., T. & S. F. Ry.* v. *United States, supra.*

CONCLUSION

For the above reasons it is respectfully submitted that the decree of the lower court should be affirmed.

DANIEL W. KNOWLTON,
Chief Counsel.
SAMUEL R. HOWELL,
Assistant Chief Counsel.

April 1952.

APPENDIX

Pertinent provisions of the Interstate Commerce Act:

Section 1(4)

It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish, reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers.

Section 1(5)(a)

All charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Section 3(1)

It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

Section 15(1)

That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or

otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonble, to be thereafter followed, and to make and order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

Section 15(3)

The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish

any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section.

Section 15(4)

In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: *Provided, however,* That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the

carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

Other sections incidentally involved are:

Section 3(4).

All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

Section 6(1).

That every common carrier subject to the provisions of this part shall file with the Com-

mission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic transportation, and facilities defined in this part.

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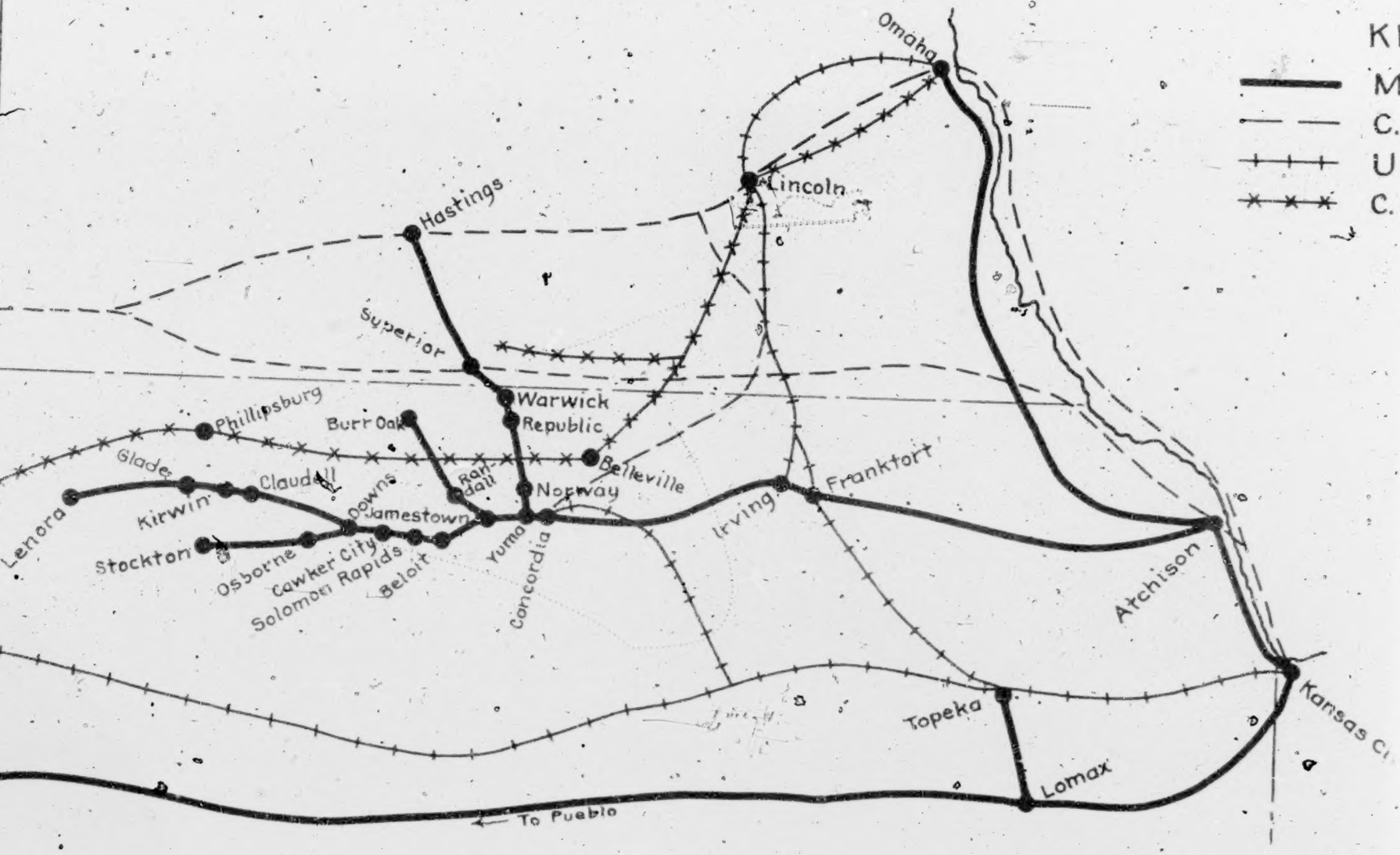
NO. 51

Rail and Geographic Locations Involved in Guy A. Thompson, Trustee, et al v. United States and Interstate Commerce Commission



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For insertion in brief of Interstate Comm

NO. 513 October Term 1951.

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